



[Billing code: 6750-01-S]

## **FEDERAL TRADE COMMISSION**

### **Agency Information Collection Activities; Submission for OMB Review; Comment Request**

**AGENCY:** Federal Trade Commission.

**ACTION:** Notice and request for comment.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, the FTC is seeking public comments on its request to OMB for a three-year extension of the current PRA clearance for the information collection requirements contained in the Contact Lens Rule. That clearance expires on September 30, 2016.

**DATES:** Comments must be received by [insert date 30 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the SUPPLEMENTARY

INFORMATION section below. Write “Contact Lens Rule: FTC File No. P054510” on your comment, and file your comment online at

<https://ftcpublic.commentworks.com/ftc/contactlensrulepra2> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the

Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J),  
Washington, DC 20024.

**FOR FURTHER INFORMATION CONTACT:** Requests for copies of the collection of information and supporting documentation should be addressed to Alysia S. Bernstein, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Mail Drop CC-10528, Washington, DC 20580, at (202) 326-3289.

**SUPPLEMENTARY INFORMATION:**

*Title:* Contact Lens Rule (Rule), 16 CFR Part 315.

*OMB Control Number:* 3084-0127.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* The FTC promulgated the Rule pursuant to the Fairness to Contact Lens Consumers Act (FCLCA), Public Law 108-164 (Dec. 6, 2003), which was enacted to enable consumers to purchase contact lenses from the seller of their choice. The Rule became effective on August 2, 2004. As mandated by the FCLCA, the Rule requires the release and verification of contact lens prescriptions and contains recordkeeping requirements applying to both prescribers and sellers of contact lenses.

Specifically, the Rule requires that prescribers provide a copy of the prescription to the consumer upon completion of a contact lens fitting and verify or provide prescriptions to authorized third parties. The Rule also mandates that a contact lens seller

may sell contact lenses only in accordance with a prescription that the seller either: (a) has received from the patient or prescriber; or (b) has verified through direct communication with the prescriber. In addition, the Rule imposes recordkeeping requirements on contact lens prescribers and sellers. For example, the Rule requires prescribers to document in their patients' records the medical reasons for setting a contact lens prescription expiration date of less than one year. The Rule requires contact lens sellers to maintain for three years records of all direct communications involved in obtaining verification of a contact lens prescription, as well as prescriptions, or copies thereof, that they receive directly from customers or prescribers.

The information retained under the Rule's recordkeeping requirements is used by the Commission to determine compliance with the Rule and may also provide a basis for the Commission to bring an enforcement action. Without the required records, it would be difficult either to ensure that entities are complying with the Rule's requirements or to bring enforcement actions for Rule violations.

On May 20, 2016, the Commission sought comment on the Rule's information collection requirements.<sup>1</sup> The Commission received comments from the American Optometric Association ("AOA") and 1-800 CONTACTS, Inc., a seller of contact lenses. The AOA states in its comment that the FTC should (1) increase the estimate of time required for a prescriber to respond to a verification request from 3 minutes to 5 minutes, (2) include in its estimate the time prescribers spend addressing issues that may arise as a result of the Rule, and (3) include wages for ophthalmologists in the estimate for labor

cost. The AOA also states that the FTC's description of the time required to provide a copy of the prescription to the patient mischaracterizes the assessment, fitting, and prescription process.

1-800 CONTACTS states in its comment its belief that the current information costs of the Rule are reasonable and justified. However, it states that the FTC has overestimated the number of hours that prescribers spend releasing prescriptions because certain states require that prescriptions be valid for two years and because some prescribers are not releasing prescriptions. The company also opined that increased compliance would lessen the Rule's burden, requested increased enforcement, and suggested a change to the Rule to improve compliance.

Data provided and requested by the AOA is reflected in updated burden estimates set out below and both the AOA's and 1-800 CONTACTS' comments are addressed in more detail within the Agency's "Supporting Statement for Information Collection Provisions of the Contact Lens Rule," which is available upon request from the FTC contact officials and separately at [www.reginfo.gov](http://www.reginfo.gov).

As required by OMB regulations, 5 CFR Part 1320, the FTC is providing this second opportunity for public comment.

*Likely Respondents:* Contact lens prescribers and contact lens sellers.

*Estimated Annual Hours Burden:* 1,903,315 hours (derived from 949,710 hours + 953,605 hours).

- *Contact Lens Prescribers:* 683,333 hours (41 million contact lens wearers x 1

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<sup>1</sup> See 81 FR 31938

minute per prescription/60 minutes) + 266,377 hours (3,196,524 verification requests  $\times$  5 minutes/60 minutes) = 949,710 hours

- *Contact Lens Sellers*: 887,923 hours (10,655,080 orders  $\times$  5 minutes/60 minutes) + 65,682 burden hours (3,940,920 orders  $\times$  1 minute/60 minutes) = 953,605 hours

*Estimated Annual Cost Burden*: \$73,082,912, which is derived from \$58,464,147.60 for prescriber hours (( $\$55.65 \times 807,253.5$  optometrist hours) + ( $\$95.05 \times 142,456.5$  ophthalmologist hours)) + \$14,618,764.65 for sellers ( $\$15.33 \times 953,605$  office clerk hours).<sup>2</sup>

#### *Request for Comment*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Write “Contact Lens Rule: FTC File No. P054510” on your comment. Your comment - including your name and your state - will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, such

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<sup>2</sup> According to the Bureau of Labor Statistics from May 2015, salaried optometrists earn an average wage of \$55.65 per hour, other physicians and surgeons earn an average wage of \$95.05 per hour, and general office clerks earn an average wage of \$15.33 per hour. See Press Release, Bureau of Labor Statistics, United States Department of Labor, Occupational Employment Statistics – May 2015, available at

as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any "[t]rade secret or any commercial or financial information which is . . . privileged or confidential," as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you are required to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comment online, or to send it to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/contactlensrulepra2>, by following the instructions on the web-based form. If this Notice appears at <http://www.regulations.gov>,

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<http://www.bls.gov/news.release/ocwage.t01.htm>.

you also may file a comment through that website.

If you file your comment on paper, write “Contact Lens Rule: FTC File No. P054510” on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H-113 (Annex J), 600 Pennsylvania Avenue, NW, Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Website at <http://www.ftc.gov> to read this Notice. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [insert date 30 days from FEDERAL REGISTER date of publication]. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <http://www.ftc.gov/ftc/privacy.htm>.

Comments on the information collection requirements subject to review under the PRA should also be submitted to OMB. If sent by U.S. mail, address comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street, NW, Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395-5167.

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